

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 277 Ad Valorem Taxation

SPONSOR(S): Finance & Tax Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee	15 Y, 0 N	Aldridge	Langston

SUMMARY ANALYSIS

In the November 2008 General Election, Florida voters approved a constitutional amendment relating to property taxes that authorized the Legislature, by general law, to prohibit consideration of the following in the determination of the assessed value of real property used for residential purposes:

- Any change or improvement made for the purpose of improving the property's resistance to wind damage.
- The installation of a renewable energy source device.

This bill provides for partial implementation of the 2008 constitutional amendment. Specifically, the bill defines "renewable energy source device" and provides that a property appraiser may not consider the increase in the just value attributed to the installation of a renewable energy source device when determining the assessed value of real property used for residential purposes.

The bill specifies that the provision applies to new and existing property. Specifically, the provision applies to changes or improvements made to properties on or after January 1, 2013.

The bill takes effect on July 1, 2013, and applies to assessments beginning January 1, 2014.

The Revenue Estimating Conference (REC) has estimated that this bill will have no impact on state revenues.

The REC estimated, **assuming current millage rates**, that the provisions of the bill will have no impact on local government revenues in FY 2013-14, but will increase each year thereafter reaching an annual impact of -\$12.6 million in FY 2017-18, which is the recurring impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to Article VII, section 3(d), Florida Constitution:

By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature approved a property tax exemption for real property on which a renewable energy source device is installed and is being operated.¹ However, the exemption expired after 10 years, as provided in the constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.

In December of 2000, the last of the exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission adding the following language to Article VII, section 4, of the Florida Constitution:

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:²

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

The amendment also repealed the constitutional authority for the Legislature to grant an *ad valorem* tax exemption to a renewable energy source device and to real property on which such device is installed and operated. This repealed language had provided the constitutional basis

¹ Sections 196.175 and 196.012(14), F.S.

² The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.

for legislation passed in 1980 and in 2008. Although the constitutional provision that the *ad valorem* tax exemption was based on has been repealed, the statutory language has not yet been repealed by the Legislature. On March 10, 2010, the House passed HB 7005, repealing the obsolete language [ss. 196.175 and 196.012(14), F.S.]. The bill, however, was not heard in the Senate and died in Messages. In 2011 and 2012, the House, again, passed the provision that repealed the obsolete language within bills implementing the constitutional amendment, but the bills died in the Senate.

Since the 2009 Session, a bill addressing implementation of the constitutional amendment has been filed in the House. In 2009, 2011, and 2012, the measure passed the House,³ but was not heard in the Senate.

Property Valuation and Property Appraisals

Article VII, section 4, of the Florida Constitution, provides that all property, with some exceptions, is to be assessed at “just value.” Florida courts define “just value” as the estimated fair market value of the property. The constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

“Assessed value of property”⁴ is defined as an annual determination of the just or fair market value of an item or property or the value of a homestead property after application of the “Save Our Homes” assessment limitation⁵ and the 10 percent cap on non-homestead property.⁶ In addition, “assessed value” is also the classified use value of agricultural or other special classes of property that are valued based on their current “classified” use rather than on market value.

Section 193.011, F.S., lists the following factors to be taken into consideration when a property appraiser is determining just valuation:

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;

³ The bills that passed the House are as follows: CS/HB 7113 (2009), CS/CS/HB 531 (2011), and CS/HB 133 (2012). In 2010, CS/HB 151 died in the House Finance & Taxation Committee.

⁴ Section 192.001(2), F.S.

⁵ The “Save Our Homes” amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of: 3 percent of the assessment for the prior year or the change in the Consumer Price Index (CPI) for all urban consumers. See Art. VII, s. 4(d)(1), Fla. Const.

⁶ On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. Some of the changes provided that the property tax assessment of certain non-homestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

- (6) The condition of said property;
- (7) The income from said property; and
- (8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

Effect of Proposed Changes

The bill provides that, in determining the assessed value of real property used for residential purposes, for both new and existing property, a property appraiser may not consider the increase in the just value attributed to the installation of a renewable energy source device.

- The installation of a renewable energy source device means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
 - Solar energy collectors, photovoltaic modules, and inverters.
 - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
 - Rockbeds.
 - Thermostats and other control devices.
 - Heat exchange devices.
 - Pumps and fans.
 - Roof ponds.
 - Freestanding thermal containers.
 - Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.
 - Windmills and wind turbines.
 - Wind-driven generators.
 - Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
 - Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

The bill provides that when residential real property is being assessed, any increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered if an application is filed with the property appraiser on or before March 1 of the first year the property owner requests the assessment. The provision applies to changes or improvements to properties made on or after January 1, 2013, and applies to assessments beginning January 1, 2014.

The property appraiser may require the taxpayer or the taxpayer's representative to furnish the property appraiser such information as may reasonably be required to establish the increase in just value attributable to the renewable energy source device.

Similar to provisions in s. 196.011, F.S., the language provides the opportunity to file a late application with the property appraiser within 25 days following the mailing of the Truth in Millage notice and authorizes the applicant to file a petition with the Value Adjustment Board (VAB), pursuant to s. 194.011(3), F.S. The applicant must pay a non-refundable fee of \$15.00 upon filing the petition. Upon

review of the petition by the property appraiser or the VAB, if the property is qualified to be assessed under the provisions of the bill and the property owner demonstrates particular extenuating circumstances to warrant granting assessment under this section, the property appraiser must recalculate the assessment in accordance with the new provision.

The bill deletes the existing definition of renewable energy source device in s. 196.012(14), F.S., and repeals the obsolete exemption (s. 196.175, F.S.), based on the repeal of the constitutional provision by the voters in 2008. Several cross-references are amended.

B. SECTION DIRECTORY:

Section 1. Creates s. 193.624, F.S., providing definitions; excluding the value of certain installations, changes, or improvements made after a specified date from the assessed value of residential real property; providing for application; requiring the filing of applications by specified times in order for such installations, changes, or improvements to be excluded from the assessed value of residential real property; providing procedural requirements and limitations; requiring a nonrefundable filing fee for a petition to the value adjustment board.

Section 2. Amends s. 193.155, F.S., specifying additional exceptions to the assessment of homestead property at just value.

Section 3. Amends s. 193.1554, F.S., specifying additional exceptions to assessment of nonhomestead property at just value.

Section 4. Amends s. 196.012, F.S., deleting the definition of the terms "renewable energy source device" and "device".

Section 5. Amends s. 196.121, F.S., amending a cross-reference.

Section 6. Amends s. 196.1995, F.S., amending cross-references.

Section 7. Repeals s. 196.175, F.S., relating to the renewable energy source device property tax exemption.

Section 8. Provides an effective date of July 1, 2013, and applies to assessments beginning on January 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated, **assuming current millage rates**, that the provisions of the bill will have no impact on local government revenues in FY 2013-14, but will increase each year thereafter reaching an annual impact of -\$12.6 million in FY 2017-18, which is the recurring impact.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions in the bill may result in lower property tax expenses and lower energy costs for taxpayers who make qualifying improvements to residential real property on or after January 1, 2013.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Article VII, section 18, of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing *ad valorem* tax bases compared to that which would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

Although this bill is implementing a constitutional amendment adopted by Florida voters, the constitutional language is permissive and only authorizes, not requires, the Legislature to act.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES